

REMARKS/ARGUMENTS

Thorough examination of the application is sincerely appreciated.

This amendment is responsive to the Office Action that was issued January 12, 2006. Claims 2, 5, 7-18, and 21-23 are pending, with Claims 9, 12, 16, 26, 27, and 28 being independent. None of the pending claims has been amended or canceled. In light of the following remarks, reconsideration and removal of the grounds for rejections are respectfully requested.

In the Office Action, Claims 2, 5, 7, 9, 10, 12, 13, 16-18, 21, 23 and 26-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number 6,028,626 to Aviv (Aviv) in view of U.S. Patent 6,954,859 to Simerly (Simerly). Further, Claims 8, 11, 14, 24, 25 and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv in view of Simerly and further in view of U.S. Patent 6,628,835 to Brill (Brill). Claims 15 and 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv in view of Simerly and further in view of NMSU Police Department (NMSU).

Rejection of claims 2, 5, 7, 9, 10, 12, 13, 16-18, 21, 23 and 26-29 under 35 U.S.C. §103(a)

The Examiner's attention is respectfully directed to MPEP 2142, wherein it is stated: "To establish a *prima facie* case of obviousness ... the prior art reference (or references when combined) *must teach or suggest all the claim limitations*... If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness."

Each of independent claims 9, 12, 16, 26-28 recites the following limiting feature:

"recognizing continuous movement of a head of a particular shopper for a predetermined amount of time."

Neither Aviv nor Simerly teaches Applicants' feature recited hereinabove.

The Examiner acknowledges that Aviv "fails to teach recognizing the movement of a head of a shopper." OA, page 3, lines 5-6. The teaching of Aviv is summarized by the following:

"According to the invention, the reference data may be obtained using any of at least the following described three methods including a) attaching accelerometers at predetermined points (for example arm and leg joints, hips, and the forehead) of actors; b) using a computer to derive 3-D models of people (stored in the computer's memory as pixel data) and analyze the body part movements of the people; and c) scanning (or otherwise downloading) video data from

movie and TV clips of various physical and verbal interactions into a computer to analyze specific movements and sounds.” Aviv, col. 13, lines 20-30

Utilization of accelerometers in accordance with the first method of Aviv is based on “dynamic pattern recognition principles.” Aviv, col. 5, lines 35-36. The first method includes recognizing a “common mugging situation in which two individuals approach a victim... .” Aviv, lines 45-53. The dynamic pattern recognition requires analyzing “the detailed movements of each object ... and their relative movements with respect to the other objects.” Aviv, col. 6, lines 45-49. Such an analysis, in turn, requires studying a series of subsequent frames of an image that allows

“determination of the type, speed and direction (vector) of each motion involved and also processing which will extract acceleration, i.e., note of change of velocity...” Aviv, col. 6, lines 62-66

Aviv discloses pattern recognizing “the files of physical criminal acts, which involve body parts movements such as hands, arms, elbows, shoulder, head, torso, legs and feet”. Aviv, col. 9, lines 46-49. However, the principle of detection in all three methods taught by Aviv is based on determination of “velocity, acceleration, change of acceleration.” Aviv, col. 5, lines 51-53; col. 9, lines 40-42.

To cure the deficiency of Aviv, the Examiner cites Simerly arguing that the reference discloses “recognizing continuous movement of a head of a particular shopper.” OA, page 3, lines 8-9. Applicants respectfully submit that there are clear factual errors in the Examiner’s citation. Applicants further submit that a *prima facie* case of obviousness has not been established to sustain the rejections on legal ground as well.

In the text referred to by the Examiner, Simerly suggests tracking and zooming “a face or other portion of a human body so that a high resolution snap shot may be taken and stored.” A face is not a head. The face may convey an emotional state of a surveyed person such as panicking, curiosity and the like. But the face and particularly the face on a snap shot cannot indicate whether the person or rather his head is moving. Thus, making the snap shot of the face, as suggested by Simerly, cannot allow for “recognizing continuous movement of a head” as recited in each of the independent claims of the invention. Accordingly, Simerly, like Aviv, fails to suggest Applicants’ feature, as recited in all independent claims of the invention.

Simerly suggests that the techniques used to track and zoom a face are limited to a high resolution snap shot. Simerly, col. 15, line 33. A snap shot – a single isolated event – would render the device of Aviv inoperative. As mentioned above, Aviv teaches a system or device based on “dynamic pattern recognition principles.” Aviv, col. 5, lines 35-36. An isolated frame, as suggested by Simerly, cannot provide the system of Aviv with a required pattern or a dynamically changing event that would allow this system to determine “velocity, acceleration, change of acceleration” as taught by Aviv in col. 9, lines 40-42. Accordingly, Aviv teaches away from the cited combination. As a consequence, an artisan would not be motivated to combine the cited references since the operational principle of Aviv would be compromised. Since the motivational factor is lacking in the suggested combination, the latter is improper. (See, *In re Rouffet*, U. S. Court of Appeals Federal Circuit, U.S.P.Q. 2d, 1453, 1458.) The only source that teaches the surveillance system operable for recognizing continuous movement of a head is the present invention. Therefore, the Examiner uses impermissible hindsight derived from the Applicants’ invention. Any combination of references including the one discussed here is improper, if such a combination is based on the impermissible hindsight. (See, *Smith Industries Medical Systems, Inc. v. Vital Signs, Inc.*, 183 D.3d 1347, 1356, 51 USPQ 1415, 1420-21 (Fed. Cir. 1999))

Accordingly, independent Claims 9, 12, 16 and 26-28 each are patentable over Aviv in view of Simerly.

Claims 2, 5, 7 and 10 depend on independent Claim 9; claim 13 depends on independent Claim 12; Claims 17, 18, 21 and 23 depend on independent Claim 16; and claim 29 depends on independent Claim 28. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, claims 2, 5, 7, 10, 13, 17, 18, 21, 23, and 29 are patentable over the cited combination.

For the above reasons, it is respectfully submitted that the rejection of Claims 2, 5, 7, 9, 10, 12, 13, 16-18, 21, 23 and 26-29 is clearly erroneous in fact and in law.

Rejection of claims 8, 11, 14, 24, 25 and 31 under 35 U.S.C. §103(a)

Claims 8, 11, 14, 24, 25 and 31 each are dependent claims. Therefore, Claim 8 and 11, Claim 14, Claims 24 and 25, and Claim 31 benefit from patentability of respective independent

Claims Claim 9, 12, 16 and 28. Withdrawal of the rejection of these independent claims is respectfully requested.

Rejection of claims 15 and 30 under 35 U.S.C. §103(a)

Claim 15 depends on independent Claim 12, and Claim 30 depends on independent Claim 28. Thus, both claims are patentable as well. Removal of the rejection of dependent claims 15 and 30 is respectfully requested.

Conclusion

This amendment places the instant application in condition for immediate allowance and such action is respectfully requested.

Respectfully submitted,

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